

DECISION MEMORANDUM

**TO: COMMISSIONER REDFORD
 COMMISSIONER SMITH
 COMMISSIONER KEMPTON
 COMMISSION SECRETARY
 COMMISSION STAFF**

**FROM: DON HOWELL
 DEPUTY ATTORNEY GENERAL**

DATE: JANUARY 25, 2008

**RE: BOWERS COMPLAINT AGAINST IDAHO POWER,
 CASE NO. IPC-E-07-14**

On July 3, 2007, the Commission received a “formal” complaint from Pamela and Scott Bowers (the Bowers) against Idaho Power. The Bowers supplemented their complaint with additional information on July 26, 2007. The Bowers requested in their complaint that new rules or laws be enacted dealing with “shared” transformers for business/commercial customers. On September 5, 2007, the Commission issued Order No. 30421, opening an investigation and directing Idaho Power to respond to the issues raised in the Bowers complaint. On October 5, 2007, the Company submitted a timely response explaining the events surrounding the Bowers’ complaint. Idaho Power asserted that its actions were in full compliance with the applicable tariffs.

On October 22, 2007, the Bowers submitted a reply to the Company’s response. On January 17, 2008, the Staff submitted comments in this case. On January 18, 2008, the Company submitted a late-filed exhibit purporting to be a large-format Plat showing the Bowers’ lot within the “20-26 commercial park.” As of today’s date, the Bowers have not filed any additional reply comments.

BACKGROUND

In December 2004, the Bowers obtained service from Idaho Power at their business, Bowers Transportation, in Caldwell. The Bowers’ business is located in a commercial subdivision primarily served by underground facilities. A surface-mounted transformer was placed on their property, in a recorded utility easement, which was adjacent to their side-lot

property line. They were required to pay a connection fee of \$1,461 for the new terminal facilities.

About two years later in December 2006, Idaho Power provided service to the Bowers' neighbor Terra-West, Inc. Terra-West's lot is adjacent to the Bowers and labeled as interior lot No. 1 on the Plat. Based upon Terra-West's load and the fact that the transformer on the Bowers' lot had the required capacity to serve both customers, Idaho Power used the single transformer to serve both customers. The Bowers had several complaints about this arrangement. They complained that it was inequitable that they had to pay for terminal facilities to obtain service and Terra-West did not. They infer that the transformer was their property. They claim that they are the only lot owners in their commercial subdivision required to share a transformer. The Bowers complained that Terra-West got special treatment because Terra-West is a subcontractor for Idaho Power.

The Bowers complained that Terra-West "has no right to use and access our property." Fax of September 26, 2007 at 2. They also complained about the easement on their property and alleged that Terra-West cut a padlock and "illegally entered our property" to hook up Terra-West's electric service from the transformer. *Id.* at 2. Finally, the Bowers complained that because of the shared usage of the transformer, the transformer may not have sufficient capacity to serve their load if they construct additional buildings on their lot. If such is the case, they allege they will have to pay for additional upgrades to the transformer – whereas Terra-West has paid nothing.

The Bowers identified the following six changes to rules or laws they believe would make this matter "fair for all parties":

1. Shared equipment shall be installed on the property line equally, not on one property owners land and lines run under the fence and onto the other property owner's lot-land.
2. No prescriptive easements or clouding a title on just one of the two lot owner's property can be given to Idaho Power.
3. The taking of another person's property should be illegal.
4. Each party receives the same amount of power-amps.

5. Notice shall be given to both-each lot owner, prior to installing equipment. Either in writing, phone calls, etc. ... Breaking and entering should be illegal.
6. A written agreement should be required for both parties and with Idaho Power. Spelling out what is expected of and from each and all parties etc. ... Making each lot owner equally responsible for payment and or damages etc.

Fax of September 26, 2007 at 2.

IDAHO POWER RESPONSE

The Company indicated it followed its standard procedures and practices in meeting the Bowers' request for service, and that it had correctly followed the applicable sections of Rule H of its tariff. Rule H is the Company's tariff that specifies the procedures for extending facilities to new customers. The facilities (i.e., the transformer and wire size) were designed and installed based upon the information provided by the Bowers in their application for service. The Bowers requested service for a 200-amp panel and identified a load of 30 kW of single-phase demand and 50 kW of connected load. Idaho Power Response at 2. The transformer, which is the property of the Company, was designed and sized to meet the actual requirements identified in the Bowers' application and the Company's judgment as to the typical requirements for a commercial customer.

The Company said that it normally sizes transformers in commercial subdivisions based upon the requested load of the first applicant, and the assumption of use for the adjacent lot, unless the usage of both lots is known before the work order is prepared. If the subsequent application for the adjacent lot exceeds the capacity of the previously installed transformer, the Company will replace the existing transformer with a larger transformer, or install a separate transformer on a different pad for the subsequent applicant, depending upon circumstances.

Idaho Power indicated the transformer was located in the permanent ten-foot wide utility easement (five feet on either side of the property line), which is identified in the plot of the subdivision recorded with the Canyon County Recorder. *See* Idaho Power Response at 1-2; Plat. The Company calculated its costs to provide service to the Bowers totaled \$2,660. *See* Idaho Power Response, Attch. 2, p. 2. The Bowers received the standard Overhead Terminal Facilities Allowance of \$1,190, as specified in Rule H, leaving a balance of \$1,461 to be paid by the Bowers. The Bowers also paid \$102.45 for the one-time Underground Service Attachment

Charge, plus \$144 in engineering fees for the work order design. The combined total of all charges paid by the Bowers was \$1,707.45.

Terra-West subsequently requested service in November 2006, for the lot adjacent to the Bowers. Based upon the information in its service application, Idaho Power determined that the existing ground transformer in the easement had sufficient capacity to serve both customers' loads. Because no new transformer facilities were required, Terra-West did not incur any charges for new terminal facilities, except for paying the Underground Service Attachment Charge of \$128.70. The Company indicated it believed the requirements of both customers were being adequately served by the facilities installed by the Company.

The Company also explained that subsequent to the installation of the transformer, the Bowers erected a chain link fence that fully enclosed their property, including the utility easement and the transformer. When it initially attempted to provide service to Terra-West, the Company discovered the fence, and informed Terra-West of its inability to access the transformer to provide Terra-West with service. Idaho Power Response at 4. Idaho Power indicated that Terra-West advised Idaho Power personnel that Terra-West would arrange for access to the transformer with the Bowers on the designated date. The Company indicated the gate to the Bowers' property was open when Idaho Power arrived to install Terra-West's service. *Id.* at 5.

The Company also explained that "vested interest refunds" for the joint-use of terminal facilities have never been a provision of Rule H or its predecessor, Schedule 71. Idaho Power Response at 7. Vested interest refunds are currently only available in three circumstances: (1) for payments for line installations outside a subdivision; (2) for line installation charges inside a residential subdivision when a permanent residence connects to the service; and (3) for undeveloped subdivisions platted prior to January 1, 1997. The Bowers' situation did not match any of these three circumstances. *Id.* at 6-7 (emphasis added).

Idaho Power also responded to the Commission's question regarding the rationale for not providing refunds for circumstances such as in this case. The Company noted that the Commission, in Order No. 27680 issued in February 1997, directed the Company to revise the refund provisions for vested interests in Rule H. The revision was to examine the number of additional applicants for refunds and the refund period in a manner that "balanced the competing objectives of fairness and administrative complexity." The Company complied with that Order

by eliminating vested interest refunds for commercial subdivisions in the tariffs filed on February 27, 1997. The Rule H tariff was subsequently approved by the Commission.

BOWERS REPLY

On October 22, 2006, the Commission received a reply from the Bowers to Idaho Power's response. In their reply, the Bowers listed 17 specific questions or matters in dispute and continue to claim that Idaho Power is treating them differently than other customers.

The Bowers question whether they received their requested 400-amp service, or received just 200-amp as asserted by the Company. They admit they do not understand "Watts," and relied on the Company's representative. Reply at p. 11, ¶¶ 1, 14.

They next assert the current location of the transformer was to be temporary because they had not decided upon the exact location of their building at the time service was requested. They agreed to the current location on a temporary basis, to protect the transformer from damage, until the building was complete. They indicate they were told they could later have it moved to a location next to their building by the Company's representative, and ask if this is still possible. *Id.* at ¶ 2.

They claim they have provided Idaho Power with a key to their gate, that they have always allowed the Company to access the property when requested, that other customers have also fenced their yards with locked gates. They ask if they are the "only lot owner required to leave our gate open to Idaho Power 24-7"? *Id.* at ¶ 3.

At the time of purchase, the Bowers were told every lot owner was responsible for obtaining their own service at their own expense. They claim they were shown the allowed location for the service box on the map, and that the area now identified by Idaho Power as an easement is a setback, and not an easement. They insist the side-lot easement was not on the Plat for the subdivision and that the Company and PUC are trying to establish a prescriptive easement by denying this matter. They also indicate this will decrease the value of their property. *Id.* at p. 12, ¶¶ 5-6. They claim all property owners in the subdivision, except Terra-West, have purchased transformers from Idaho Power and they are the only party being required to "share" facilities. *Id.* at ¶ 6.

They complain the Company and PUC are using the rules and regulations to protect the interests of the Company and not the customer. *Id.* at p. 13, ¶ 9. Idaho Power will not provide them with information concerning rules or regulations, and want to know where such

information is available. They maintain they were never informed of the possibility that facilities might be shared, that they are the only instance they are aware of in which sharing is allowed, and that a written agreement to share facilities should be required, with each party sharing in the costs. *Id.* at ¶ 12.

They claim any excess capacity available in the transformer they paid to have installed on their property should be available for their use, and not given to a neighbor for free.

They request an explanation as to what the Company meant by the following statement in its response:

Because existing electrical facilities were not adjacent to the Bowers lot at the time of the Bowers service request, additional investment by the Company for installation of the required transformer was necessary.

Id. at p. 15, ¶ 16. Finally, they request that Rule H be changed so that vested interest refunds are available for investments paid for by customers inside of commercial subdivisions.

STAFF COMMENTS

Based upon Staff's review of the complaint, Idaho Power's response and the tariff, the Staff calculated that the Bowers and Terra-West were correctly charged. The Staff explained that vested interest refunds are not available for any line extension within commercial subdivisions. Staff explained that the first customer requesting service (e.g., the Bowers) is charged for all costs in excess of the commercial allowance for terminal facilities (\$1,190), and any subsequent customer (e.g., Terra-West) may connect to the existing facilities if there is sufficient capacity. A subsequent customer only pays the installation charge for the underground service.

Staff recognized that under these situations, not all commercial customers will be treated the same. However, this tariff balances the goals of treating customers equitably with the goal of reducing the administrative burdens of tracking investments and vested interest payments. In essence, the Company is recovering the facility cost from the first customer without risking the recovery of the investment. The Commission approved the tariff filed in compliance with its Order No. 27680.

The Staff also noted that the "sharing" of transformer is a common practice. The Company has approximately twice as many customers as transformers. Transformers are the Company's property, not the customer's property. The decision whether a transformer will be

used to serve more than one customer is an engineering decision made by the Company based upon the loads and locations of the customers.

Staff also noted that Idaho Power maintains that Terra-West was not and has never been a contractor or sub-contractor to the Company.

Staff indicated that the Bowers are correct when they claim they are the only customers in the subdivision to have a shared transformer. However, Staff also noted there are vacant lots in the subdivision so there may be shared facilities in the future. If the Bowers add a building that would require a larger transformer, the Company will replace the existing transformer with a larger one at no cost to either customer. *See* Staff Exh. 203. However, if the Bowers decide to move the transformer or locate future uses on their lots too far from the existing transformer, they may incur additional charges as specified in Rule H.

Staff observed that the Bowers were the first customers in more than ten years since Rule H was implemented to complain about the lack of vested interest refunds. A review of the Staff files over the most recent four years did not reveal any complaints of this type.

COMMISSION DECISION

What action does the Commission wish to take regarding the Bowers complaint?



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Deputy Attorney General

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